

General Clean Air Act Policies and Guidance

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460
APRIL 17, 1995

MEMORANDUM

SUBJECT: Clarification Package: Guidance on the Timely and
Appropriate Enforcement Response to Significant Air Pollution
Violators (SVT&A Guidance)

FROM: Michael M. Stahl (Signature)
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Office of Enforcement and Compliance Assurance (2211)

TO: Karen V. Brown
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Office of Small and Disadvantaged Business Utilization (1230C)

In my memorandum of September 21, 1994, I said that we would respond to your concerns relative to the subject memorandum dated June 14, 1994 (1994 Clarification) and the small business community. Your major concern was that the new guidance memorandum added non-major National Emission Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS) sources as significant violators (SV) and that this "redefinition of SV" would adversely impact small businesses especially in light of new initiatives by our office to assist small sources in achieving compliance.

We have reviewed both the subject memorandum and the February 7, 1992 guidance on the Timely and Appropriate Enforcement Response to Significant Air Pollution Violators (1992 Guidance) in light of our office's initiative to help small sources achieve compliance through compliance assistance and other means. The latter of these documents (our August 12, 1994 Enforcement Response Policy for Treatment of Information Obtained Through Clean Air Act Section 507 Small Business Assistance Programs) was being negotiated when you initially raised your concerns.

The SV guidance is intended to enable EPA and the States to focus enforcement efforts on the highest priority of noncomplying sources and to work together in resolving violations in a timely manner. One of the purposes of the 1994 Clarification was to include all NESHAP and NSPS sources as SVs as was done prior to 1992. It was our intent to include these source in the 1992

Guidance by referencing the expanded definition of a major source under the 1990 CAA Amendments, but this definition fails to include all of the Part 61 NESHAP of the minor NSPS sources.

EPA does not currently plan on revising the SVT&A guidance and considers the 1992 Guidance to be the controlling document in cases of conflict with the 1994 Clarification. We agree, therefore, that minor sources (including Title III air toxics area sources) should not be classified as significant violators at this time. While we do not plan on revising the SVT&A, it is still our intent to track violators which pose the most significant risk to human health and the environment. For this reason, we encourage the Regions and States to track Part 61 NESHAP violators as they deem appropriate. As stated in the 1992 Guidance, "this guidance is not intended to detract from the importance of addressing other violators and the right and responsibilities of the States and EPA for doing so."

While the 1992 Guidance policy does not require inclusion of all NESHAP sources as well as minor NSPS sources in attainment areas as Svs, many of the formerly minor NSPS sources in nonattainment areas may now be classified as major sources. This is due to the 1990 CAA Amendments, which set more stringent annual emission limits for the serious, severe or extreme nonattainment areas. Some of the sources within the small business community may be classified as major sources under the post-1990 CAA due to the new emission limits. However, Section 507(c) includes the eligibility requirement that the program applies only to those small businesses classified as non-major for all air programs. Therefore, by definition, the small businesses participating in the SBAP should not be classified as significant violators.

According to the final §507 policy, States may offer a correction period option to small businesses in the SBAP that allows up to 90 days to either correct or take substantial steps to correct violations discovered during compliance assistance. They also may be granted an additional 90 days for violations that cannot be corrected within the initial 90 days of detection. Since only small businesses that are non-major for all air programs are eligible to participate in the §507 program and EPA does not include Title III area sources as Svs, we do not believe that the SBAP sources will be entered into the Timely and Appropriate tracking of Svs. But were this somehow to occur and a source was given the 90 days to correct their violations, the Timely and Appropriate (T&A) timeclock would not begin unless the correction period (and extension if applicable) were exceeded. If this happens the T&A timeclock would begin (Day Zero) 30-90 days (according to the SVT&A guidance) after the correction period and subsequent discovery of the violation. (We expect that a separate tracking system may be used for SBAP participants

in order to determine the effectiveness of the compliance assistance program, i.e., whether the sources return to compliance as a result of receiving compliance assistance. This is particularly important when sources are offered a correction period as part of compliance assistance. EPA is developing a tracking mechanism for the States to use in overseeing those sources offered compliance assistance.)

I trust that this clarifies your concerns. Please contact me or Linda Lay of my staff if you have any further questions.

cc: Steve Herman
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Air Division Directors, Regions I-X
Regional Counsels, Regions I-X

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460
JUNE 14, 1994

MEMORANDUM

SUBJECT: Clarification Package for the Guidance on the Timely and
Appropriate Enforcement Response to Significant Air Pollution
Violators (SV/T&A Guidance)

FROM: John B. Rasnic, Director (Signature)
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TO: Air, Pesticides and Toxics Management Division Directors
Regions I and IV

Air and Waste Management Division Director
Region II

Air Radiation and Toxics Division Director
Region III

Air and Radiation Division Director
Region V

Air, Pesticides and Toxics Division Director
Region VI

Air and Toxics Division Directors
Regions VII, VIII, IX and X

This memorandum introduces the clarification package for the
Guidance on the Timely and Appropriate Enforcement Response to
Significant Air Pollution Violators. The clarification package
was developed by my staff who worked with the Air Compliance

Section Chiefs and the AIRS Facility Subsystem (AFS) managers to reach consensus on reporting and defining aspects of the guidance that have been unclear or interpreted differently between Regions. The goal of the package is to encourage uniform implementation of the guidance and to make the data generated by the guidance consistent, hence, more representative and useful. And equally important benefit is that the package should prove to be a useful tool for instructing new staff on the logistics of the guidance.

If you would like to discuss this I can be reached at (703) 308-8600 or Seth Heminway can be reached at (703) 308-8706.

SV/T&A GUIDANCE CLARIFICATION PACKAGE

Prepared by Seth Hemiway,
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June 14, 1994

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Entering SV's into AFS and NARS (Under development by AFS Managers)	

Attachments:

- I Abbreviated Quarterly Reporting Form
- II Annual State-By-State Reporting Form page 1.
- III Annual State-By-State Reporting Form pages 2+

SV/T&A Guidance Clarification Outline

This outline will be most useful when it is read in conjunction with the SV/T&A Guidance. It is designed to encourage more consistent reporting and implementation of the Guidance by clarifying language that has been interpreted differently in various States and Regions.

Guidance cover letter

I. Scope and Summary of Guidance

- A. Applicability
- B. Summary of Guidance
- C. General Information About the Guidance

II. Philosophy of Guidance

- A. Definition of SV

Under Title VI only violations at sources subject to Sections 604 (producers and importers of stratospheric ozone depleting compounds) could meet the definition of SV. The majority of violations that occur under Sections 608 and 609 at

CFC sources would not meet the definition of Significant Violator since they are not major sources.

The definition should be interpreted to include violations at all NESHAP and NSPS sources.

All violators that meet the definition of significant violator shall be considered SV's, as defined by the February 7, 1992 SV/T&A Guidance, the October 27, 1993 Asbestos NESHAP Addendum to the SV/T&A Guidance and the Acid Rain Addendum to the SV/T&A Guidance when it is final.

III. Processing of SV's

A. Agency Communications Concerning SV's

B. Processing of SV's

6. The significant violator shall remain an SV (tracked in AFS/NARS) until all violations against it have been resolved.

C. EPA Maintaining Enforcement Authority

IV. T&A Time Lines For Enforcement Actions

Violations discovered in records, received from a source shall be assigned a day zero no later than 30 days after the records were received by the enforcing agency.

A separate day zero can be created for any additional violations at a source that has unresolved violations. However, violations that were discovered during the same investigation, e.g., a series of inspections, a section 114 response, a record review or a quarterly report, that occurred within 30 days of each other, should be grouped under the same day zero, especially if the clustered violations will be addressed in the same enforcement listed under one day zero only the most serious air program and emission violation should be counted or purposes of Headquarters reporting.

A. Day zero

"The clock starts (i.e., day zero) **no later than** 30 days after the discovering agency first receives information concerning a federally reportable violation..." (This has been highlighted in order to prevent timely and appropriate calculations from being negative, which happens when violations are addressed before a day zero has been assigned. The day zero is not revised once a violation has been confirmed.)

B. Day 45

C. Day 90

D. EPA Lead

E. Day 150 (no lead change), or Day 190 (lead change)

"By Day 150 (or 190 with lead change), the source shall either be RESOLVED or ADDRESSED, i.e., on a legally enforceable...." (This interpretation has been highlighted to ensure that violations are resolved with enforcement actions to maintain deterrence against future violations.)

F. Resolved v. Addressed

Normally a violation is addressed first and then resolved.

V. Penalties

VI. Consultation and Data Transfer

A. Informal Consultation

B. Update EPA's Compliance Database

The SV flag (SVI1 filed in AFS) must be accurately maintained in order to ensure that this data, which is shared by other enforcement offices within EPA and the States, correctly reflects the SV status for all sources subject to the SV/T&A Guidance. (This field is becoming increasingly more important as the agency shifts further toward multimedia, geographic and industry specific enforcement. As stated in the SV/T&A Guidance AFS/NARS is to be updated monthly (SV/T&A p 10). Headquarters will pull SV information quarterly from AFS.)

Summary data that is incorporated in the quarterly report to the Office of Enforcement and Compliance Assurance shall be used as the archived summary data for trends analysis. (This approach will put renewed emphasis on getting the numbers right the first time. It will prevent last minute changes that, admittedly, may reflect the most accurate number but that often cause confusion later since not all parties who received the data have accounted for the last minute changes. If errors are made either in the reporting of data or in the classification of an SV then corrections to AFS would be captured in the following quarter's report.)

C. Provide Inspection Results

D. Sharing of Data

SIGNIFICANT VIOLATOR ACCOUNTING GUIDELINES

Note: There are two major aspects of SV accounting that need to be recognized. One is the SVI1 flag in AIRS Facility Subsystem (AFS) that indicates whether or not a source is a significant violator and it is critical for multimedia enforcement targeting. The second is the T&A accounting of how long the lead agency took to address the violation(s), which is based on the day zero.

1. **Adding SV's to AFS:** Finding agency detects violation and enters it into AFS/NARS (or reports manually if not yet direct or upload user of AFS). EPA and State discuss / examine violation(s) and if it is a significant violation(s) EPA enters the compliance status and the SV flag in AFS indicating that the source is a significant violator. From this time until resolution the SVI1 flag is modified monthly to reflect the source's SV status. For multiple violations the SV flag shall reflect the worst compliance status. The SV is reported as "added" in the quarter the source is added to AFS. Violations(s) involving multiple pollutants or multiple air programs should not be counted more than once. Violations discovered during a single investigation should be counted for purposes of headquarters T&A reporting as one significant violator under a single day zero.
2. **SV's discovered by EPA after the end of the quarter:** When a significant violator is reported to EPA by a State or local agency after the end of the quarter in which it was discovered, it shall be reported to Headquarters as if it had occurred during the quarter that it was reported to the EPA Regional Office. Although resolution occurred, it will simplify reporting while continuing to provide Headquarters with an indication of the level of SV activity. The goal is to maintain a stable count for each quarter while allowing SV's that are discovered after the quarter ended to be added.
3. **Addressed:** The Significant Violator is maintained on HQ report as unaddressed until the violations against it are addressed. Once an SV has been addressed it remains on the HQ SV Summary report only until the end of the fiscal year. At the beginning of the fiscal year only unaddressed SV's from the previous FY will appear on the HQ summary SV report. The Region continues to track addressed SV's until they are resolved and reports them to headquarters as such in AFS/NARS.
4. **Unaddressed:** Unaddressed SV's are reported on the SV summary report and are brought forward from the previous quarter to the next. Similarly, the unaddressed SV's are brought forward from one fiscal year to the next.
5. **Deletions from SV list:** If it is determined that an SV has

been incorrectly identified as an SV, for instance, if upon further examination it is determined that no violation actually occurred, or if the source was not in fact subject to the requirement, then the appropriate action code "RV" is added to AFS by EPA and the SV is reported in the HQ summary report as being deleted for cause, and the SVI1 flag is reset. For auditing purposes, a note to the file in the action comment field must be added that explains why the source is not be intracked as an SV.

6. **Resolved:** The resolved SV's should be reported in the quarter that EPA or the State discovers that the violation has been resolved, whether or not it is the actual quarter the violation was resolved. It is expected that the States and Regions will monitor addressed SV's until they are resolved. Once resolved the SV flags in AFS/NARS are updated and the violation is no longer tracked. (AFS/NARS coding conventions will be modified to accommodate SV's resolved.)

7. **Annual Reports:** In order to accommodate the end of year reports, the Timely and Appropriate Report and the State by State Enforcement Data Summaries, the Regions need to ensure that the core data fields and the T&A fields in AFS are properly filled out, otherwise manual tabulations will be required.

SV/T&A GLOSSARY

(This glossary of terms is designed to clarify the terminology used by EPA in the SV/T&A Guidance and the associated compliance and enforcement reporting. Terms that originate with the guidance have been underlined and those that are legal terms have been italicized.)

Addressed means that one of the following actions that impose a compliance schedule or require immediate compliance have been taken: a notice of noncompliance that includes a penalty (section 120) issued (AFS code: 7A), an EPA civil action referred to DOJ (AFS code: 4B), a CAA section 113(a) order issued (AFS code: 8A), EPA CAA section 167 order issued (AFS code: 7E), a CAA section 113(d)(1) complaint filed (AFS code: 7E), EPA criminal referral to DOJ (AFS code: 5B), a consent decree or consent agreement filed (AFS code: 6B), a consent decree or consent agreement filed (AFS code: 2D), a State civil action has been referred to AG (AFS code 9C),

